



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0549]

RIN 1625-AA00

Safety Zone; New York Upper Bay, Pierhead Channel, and Port Jersey Channel, Bayonne, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel within 100 yards of the Bayonne Peninsula bulkhead. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by two building demolitions on shore. When enforced, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port of New York or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through October 31, 2021. For the purposes of enforcement, actual notice will be used from August 8, 2021 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0549 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jaison Kurian, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4352, email Jaison.Kurian@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to safeguard the public. Two brick and concrete rebar reinforced buildings (Numbers 32 and 42), six and one-half stories tall and located along the south shore of the Bayonne Peninsula are being demolished using land based explosives and immediate action is needed to respond to the potential safety hazards associated with this activity. It is impracticable to publish an NPRM because we must establish this safety zone by August 8, 2021. This rule is enforceable through October 31, 2021 as a contingency for any unforeseen delays or revisions to the building demolitions

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to protect the public from the potential safety hazards associated with this activity.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with explosives demolition of two buildings on August 8, 2021, will be a safety concern for anyone within the waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel within 100 yards of the Bayonne Peninsula, New Jersey bulkhead.. The rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the two buildings are being demolished.

IV. Discussion of the Rule

This rule establishes a safety zone from August 8 through October 31, 2021. The safety zone will cover all navigable waters within 100 yards of the Bayonne Peninsula, New Jersey. The zone will only be enforced during explosives loading and demolition of two onshore bulidings tentatively scheduled from 6:00 a.m. to 11:00 a.m. on Sunday, August 8, 2021. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the explosives are being loaded into the two buildings and the two buildings are being demolished. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, time-of-day on a Sunday morning, and the duration of enforcement of the safety zone. The Port Authority of NY/NJ, demolition contractor, and the owner of the two buildings have coordinated the building demolitions with berth operators at the Bayonne Peninsula, New Jersey to minimize impacts. The Bayonne Golf Club, west of the safety zone, has also been notified and ferries transiting to the golf club will be authorized to transit through the 100 yard safety zone from 6 a.m. to 10 a.m. prior to the building demolitions. Vessels berthing at the Global Container Terminal, on the opposite side of Port Jersey Channel, will be outside of the safety zone and not expected to be impacted. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only five hours that will prohibit entry within waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel within 100 yards of the Bayonne Peninsula, New Jersey bulkhead.. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0549 to read as follows:

§ 165.T01-0549 Safety Zone; New York Upper Bay, Pierhead Channel, and Port Jersey Channel, Bayonne, NJ.

(a) *Location.* The following area is a safety zone: All navigable waters of New York Upper Bay, Pierhead Channel, and Port Jersey Channel, from surface to bottom, within 100 yards of the Bayonne Peninsula bulkhead bound by the following points beginning at 40° 40' 20.1"N, 074° 05' 22.6"W thence to 40° 40' 10.3"N, 074° 04' 54.5"W; thence to 40° 39' 49.9"N, 074° 04' 06.1"W; thence to 40° 39' 38.6"N, 074° 04' 14.6"W; thence to 40° 39' 59.4"N, 074° 05' 08.2"W; thence to 40° 40' 03.5"N, 074° 05' 22.6"W; thence to the point of origin at 40° 40' 20.1"N, 074° 05' 22.6"W. These coordinates are based on NAD 83.

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) To seek permission to enter, contact the COTP or the COTP’s representative by VHF-Channel 16 or at 718-354-4353. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative.

(d) *Enforcement period[s].* This section is effective from August 8 through October 31, 2021, but will only be enforced when building demolition operations are in progress.

Dated: August 3, 2021.

ZEITA MERCHANT,
CAPTAIN, U.S. Coast Guard,
Captain of the Port New York.